

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	4:94CR3043
Plaintiff,)	
)	
v.)	USM No: 14303-047
)	
LEE WARN SCOTT,)	<u>MICHAEL J. HANSEN</u>
Defendant.)	Defendant's Attorney
Date of previous judgment: 12/20/1995)	

Order Regarding Motion for Sentence Reduction Pursuant to 18 U.S.C. § 3582(c)(2)

Upon motion of the defendant under 18 U.S.C. § 3582(c)(2) for a reduction in the term of imprisonment imposed based on a guideline sentencing range that has subsequently been lowered and made retroactive by the United States Sentencing Commission pursuant to 28 U.S.C. § 994(u), and having considered such motion,

IT IS ORDERED that the motion is DENIED.

I. COURT DETERMINATION OF GUIDELINE RANGE (Prior to Any Departures)

Previous Offense Level:	<u>44</u>	Amended Offense Level:	<u>42</u>
Criminal History Category:	<u>II</u>	Criminal History Category:	<u>II</u>
Previous Guideline Range:	<u>240</u> to <u>240</u> months	Amended Guideline Range:	<u>240</u> to <u>240</u> months

II. SENTENCE RELATIVE TO AMENDED GUIDELINE RANGE

- The reduced sentence is within the amended guideline range.
- The previous term of imprisonment imposed was less than the guideline range applicable to the defendant at the time of sentencing as a result of a departure or Rule 35 reduction, and the reduced sentence is comparably less than the amended guideline range.
- Other (explain): See below.

III. ADDITIONAL COMMENTS

Pursuant to U.S.S.G. § 5G1.1, and at the time of the original sentence, I capped the defendant's sentencing exposure at the statutory maximum of 240 months. Since the new range under the amended and retroactive "crack" Guidelines is 360 months to life without the statutory cap, Scott is not entitled to relief. *United States v. McFadden*, 523 F.3d 839, 840-841 (8th Cir. 2008) (where the statutory maximum sentence capped the Guidelines, Amendment 706 did not apply because the range provided by the amendment did not have the effect of lowering the defendant's applicable Guidelines range; the capped range remained the same) (applying U.S.S.G. §1B1.10(a)(2)(B)). Filing 196 is denied.

IT IS SO ORDERED.

Dated this 10th day of July, 2008
Effective Date: Thursday, July 10, 2008

S/Richard G. Kopf
United States District Judge